

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

TOWN OF NORMAN WELLS

Plaintiff

- and -

CATHERINE MALLON, NATHAN WATSON, and 507314 N.W.T. LTD.

Defendants

NOTICE TO DEFENDANTS

1. You are hereby notified that the Plaintiff may enter judgment against you in accordance with the attached Statement of Claim, or such judgment as may be granted under the Rules of the Supreme Court of the Northwest Territories, without further notice to you unless within 25 days (if served in the Northwest Territories) or 30 days (if served outside the Northwest Territories) after service of the Statement of Claim on you, you cause to be filed in the office of the Clerk of the Supreme Court of the Northwest Territories either:

- (a) a Statement of Defence, or
- (b) an Appearance,

and unless within the same time you serve a copy of the Statement of Defence or Appearance on the Plaintiff or the Plaintiff's lawyer.

2. The attached Statement of Claim is to be served within 12 months from the day on which it is issued.
3. Every Defendant should consult his or her lawyer, or refer to the *Rules of the Supreme Court of the Northwest Territories*, to determine his or her rights.

The attached Statement of Claim is hereby issued out of the office of the Clerk of the Supreme Court of the Northwest Territories at Yellowknife, Northwest Territories, on the 3rd day of May, 2019.

D/Clerk of the Supreme Court of the Northwest Territories



IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

TOWN OF NORMAN WELLS

Plaintiff

- and -

CATHERINE MALLON, NATHAN WATSON, and 507314 N.W.T. LTD.

Defendants

STATEMENT OF CLAIM

Parties

1. The Plaintiff, the Town of Norman Wells (the “**Town**”), is a municipality incorporated in the Northwest Territories.
2. The Defendant, Catherine Mallon (“**Mallon**”), is an individual who was at all material times a resident of Norman Wells, Northwest Territories. Mallon was at all material times employed by the Town as the Senior Administrative Officer (the “**SAO**”).
3. The Defendant, Nathan Watson (“**Watson**”), is an individual who was at all material times a resident of Norman Wells, Northwest Territories. Watson held the office of Mayor for the Town between October 15, 2015, and November 1, 2017.
4. The Defendant, 507314 N.W.T. Ltd. (“**Watson’s Company**”), is a corporation duly incorporated in the Northwest Territories on September 6, 2018, based in Norman Wells, and of which Watson is the sole director.
5. To the best of the Town’s knowledge, Mallon and Watson were in a personal and/or business relationship together at all material times.

Mallon's Employment with the Town

6. Mallon was hired by the Town as the SAO on an indeterminate basis through an employment agreement dated November 1, 2015 (the "**First Employment Agreement**"). The First Employment Agreement was appropriately approved by the Town Council and signed by Watson as the Mayor of the Town.
7. Mallon was appointed as SAO through By-Law No. 15-21 (the "**SAO By-Law**"), which was passed by the Town Council pursuant to section 41(1) of the *Cities, Towns, and Villages Act*, S.N.WT. 2003, c. 22, Sch. B. The SAO By-Law set out some of Mallon's duties and responsibilities as SAO. The SAO By-Law incorporated by reference the First Employment Agreement.
8. Additional terms and conditions of Mallon's employment by the Town were contained in the Town's employment bylaw, By-Law No. 13-11 (the "**Employment By-Law**").
9. Under the terms of the First Employment Agreement, the Town agreed to provide Mallon with, *inter alia*, the following:
 - (a) \$152,387.99 in salary;
 - (b) \$15,000 in housing allowance per year;
 - (c) \$15,000 in northern allowance per year;
 - (d) six weeks of vacation per year;
 - (e) two additional weeks of leave in lieu of overtime;
 - (f) reimbursement for all out of pocket expenses reasonably and directly incurred by Mallon in the discharge of Mallon's duties, provided that such expenses shall only be reimbursed when supported by proper receipts, invoices or vouchers submitted to the Town within 30 days from the date upon which such expenses are incurred and are approved by the Town Council;

- (g) reimbursement for reasonable moving expenses to Norman Wells, which would not include the expense of moving major furniture items; and
 - (h) Registered Retirement Savings Plan (“**RRSP**”) matching, which required Mallon to provide the Town with evidence of her own RRSP contribution.
10. Mallon and the Town allegedly entered into a new, fixed-term employment agreement dated November 1, 2016 (the “**Second Employment Agreement**”) that purported to amend the terms of the First Employment Agreement.
11. The Second Employment Agreement was inappropriately signed by Watson on behalf of the Town without the Town Council’s knowledge or approval. Furthermore, Watson intentionally withheld knowledge of the Second Employment Agreement from the Town Council.
12. The Second Employment Agreement purportedly changed Mallon’s employment status from an indeterminate employee to a term employee with a term of November 1, 2016, to November 3, 2018.
13. Under the terms of the Second Employment Agreement, Mallon was purportedly newly entitled to, *inter alia*, the following:
- (a) \$176,577.02 in salary retroactive to February 2, 2016, which was an increase of \$24,189.03 from the amount agreed to by the Town through the First Employment Agreement for substantially the same period of time covered by the First Employment Agreement;
 - (b) overtime at a rate of 1.5 times her regular rate of pay for any time over 7.5 hours per work day and 37.5 hours per week, but not including time spent at the meetings of the Town Council, which was not an entitlement provided under the First Employment Agreement and not one usually provided to senior management; and

- (c) a full payout of the remaining term of the contract upon termination by the Town for any reason, which was not an entitlement provided under the First Employment Agreement.
14. As SAO, Mallon was responsible for the day-to-day operations of the Town. Mallon controlled the financial management for the Town and reported to Watson as Mayor and to the Town Council. Mallon also supervised the administrative team within the Town, including payroll personnel.
 15. In her role, Mallon had sole discretion over the day-to-day decisions relating to the financial management of the Town. Her responsibilities included oversight for spending and payroll decisions. Mallon was also permitted to make charges to the Town's credit card.
 16. On November 1, 2017, the Department of Municipal and Community Affairs ("MACA") of the Government of the Northwest Territories declared the Town subject to administration, pursuant to section 157 of the *Cities, Towns, and Villages Act*. At that time, the Town Council was dissolved and Watson's appointment as Mayor ceased. MACA then appointed an Administrator to manage the operation of the Town.
 17. MACA put the Town into administration partially as a result of financial mismanagement and misconduct by Mallon and Watson.
 18. On or about October 1, 2018, Mallon took leave and ceased her duties as SAO. The Town paid Mallon for the remainder of the term of the Second Employment Agreement to November 3, 2018.

Watson's Term as Mayor of the Town

19. On October 15, 2015, Watson was acclaimed as Mayor of the Town.
20. As Mayor, Watson was responsible for, *inter alia*, providing direct supervision of the SAO, including, *inter alia*, the approval of the SAO's timesheets, expense claims, vacation leave requests, and entitlement payouts.

21. On November 1, 2017, Watson's term as Mayor ceased when MACA put the Town into administration.
22. On October 15, 2018, the new Mayor and Town Councillors were elected.
23. On November 2, 2018, MACA took the Town out of administration.

Fraud by Mallon and Watson

24. The current Town Council asked MACA to hire a forensic accountant to review all payroll, purchasing, and payment activities involving Mallon, Watson, and the Town.
25. Based on the findings of the forensic accountant, Mallon, either by herself or in conspiracy with Watson, perpetuated a fraudulent scheme to enrich herself and Watson at the expense of the Town by:
 - (a) inappropriately causing the Town to purportedly enter into the unnecessary and void Second Employment Agreement, which:
 - (i) Mallon and Watson knew or ought to have known was detrimental to the finances of the Town;
 - (ii) significantly increased her salary retroactive to almost her entire tenure as SAO for a total of \$97,337.97 in additional pay, which undermined the intention of the First Employment Agreement;
 - (iii) provided her with a new entitlement to overtime on an hourly basis, which Mallon and Watson knew or ought to have known is not an entitlement given to senior management; and
 - (iv) required the Town to pay her salary for the entire term of the Second Employment Agreement in the event that she is terminated for any reason;
 - (b) inappropriately submitting claims for and receiving:

- (i) overtime and lieu time, which was not an entitlement under the First Employment Agreement;
- (ii) \$527,905.33 for 3,887 hours of overtime during her tenure as SAO, which is a quantum that was impossible to accumulate over that period of time and must have been fabricated;
- (iii) \$67,089.89 for lieu time paid out, which was not an entitlement under the First Employment Agreement and was a fabrication;
- (iv) overtime and lieu time claimed on days that Mallon reported as sick days, statutory holidays, or vacation leave days, meaning such time was fabricated;
- (v) \$64,820.62 in vacation leave payouts for excess vacation leave, despite Mallon actually using said vacation leave;
- (vi) \$16,593.64 in vacation travel assistance, which was paid out without receipts or invoices that Mallon and Watson knew or ought to have known were required;
- (vii) \$329,121.48 in reimbursed expenses, which were submitted without receipts, invoices, or vouchers and without approval of the Town Council, contrary to her employment agreement, including:
 - (1) \$1,092.41 in expenses incurred outside of Canada while on vacation; and
 - (2) double reimbursement for the purchase of a Dyson vacuum cleaner in the amount of \$489.25;
- (viii) \$17,360.00 for the sale of personal items to the Town without proper documentation or authorization, of which some items may have already been owned by the Town. Further, said sale was purportedly authorized by

Watson after his term as Mayor had ceased and was backdated to a time when he was Mayor;

- (ix) \$13,342.03 for the cost of moving from Dublin, Ireland to Norman Wells, which likely included the cost of moving major furniture items, contrary to her employment agreement;
 - (x) \$89,161.90 in personal expenses charged to the Town's credit card and without supporting documentation, contrary to her employment agreement; and
 - (xi) \$9,556.29 in personal foreign currency expenses charged to the Town's credit card while on vacation outside of Canada and without supporting documentation, contrary to her employment agreement;
- (c) directing the Town's staff to prepare cheques for RRSP matching in the amount of \$27,190.00 in her name without taxes withheld, when she knew or ought to have known that the cheques were to be issued in the name of the RRSP issuer with proof of matching contributions to be supplied to the Town; and
 - (d) authorizing the Town's purchase of a painting from Watson in the amount of \$6,000.00, which the Town Council later discovered and directed Mallon to reverse. Despite the Town Council's direction to Mallon, the transaction was never reversed;

(together, "**Mallon's Fraudulent Scheme**").

26. Watson knowingly participated in Mallon's Fraudulent Scheme and misconducted himself by:

- (a) inappropriately signing the unnecessary Second Employment Agreement on behalf of the Town without authorization from the Town Council when he knew or ought to have known that such authorization was required. Further, Watson knew or ought to have known that the Second Employment Agreement was detrimental to the finances of the Town;

- (b) inappropriately approving overtime, lieu time payouts, vacation leave payouts, and expense claims inappropriately submitted by Mallon without proper supporting documentation that Watson knew or ought to have known were not valid transactions;
- (c) placing himself in a conflict of interest by approving transactions submitted by Mallon when he and Mallon had a relationship that was not disclosed to the Town, contrary to the Town's bylaws and policies;
- (d) acquiescing to or approving Mallon's use of the Town's credit card for personal transactions when he knew or ought to have known that such transactions were not appropriate and contrary to the Town's bylaws, policies, and procedures;
- (e) retroactively approving the Town's purchase of items from Mallon, including items already owned by the Town, months after Watson's term as Mayor had ceased in the amount of \$17,360.00, which Watson knew or ought to have known was fraudulent; and
- (f) conspiring with Mallon to sell a painting to the Town in the amount of \$6,000.00, which the Town Council later discovered and directed be cancelled, which was not done;

(together, "**Watson's Misconduct**").

27. The Town's investigation is ongoing and further instances of misappropriated funds and other fraudulent activities may be discovered.

Second Employment Agreement Void *Ab Initio*

28. The Second Employment Agreement was void *ab initio*, because Watson lacked the authority to sign the agreement on behalf of the Town without the approval of the Town Council.
29. Further or in the alternative, the Second Employment Agreement was void *ab initio* because Mallon and Watson were in a conspiracy together to defraud the Town.

30. Since the Second Employment Agreement is void *ab initio*, Mallon's employment with the Town continued under the terms of the First Employment Agreement.

Breach of Fiduciary Duty by Mallon

31. In her position as SAO, Mallon was required to exercise her discretion and authority to manage the finances of the Town for its benefit. Furthermore, Mallon was required to comply with the Town's bylaws, policies, and procedures in carrying out the duties of her position. Mallon was also required to disclose her relationship with Watson to the Town Council.
32. Mallon owed a duty of care, including a fiduciary duty of care, to the Town to perform her job honestly, diligently, and in good faith. In carrying out Mallon's Fraudulent Scheme, Mallon breached her duties to the Town, including the fiduciary duty of care she owed to the Town.
33. The Town was particularly vulnerable to the discretion and authority Mallon had over the Town's assets and finances in light of her position, such that the misuse described in Mallon's Fraudulent Scheme constitutes a breach of fiduciary duty causing injury, loss, and damage to the Town.
34. As a result of Mallon's breaches of duty, the Town has suffered injury, loss, and damage in the amount of approximately \$1,259,479.15 or such further amounts as may be proven at the trial of this Action.

Breach of Fiduciary Duty by Watson

35. In his position as Mayor, Watson was required to carry out the duties of his office in good faith and pursuant to the bylaws, policies, and procedures of the Town. Watson was also required to disclose his relationship with Mallon to the Town Council.
36. Watson owed a duty of care, including a fiduciary duty of care, to the Town to perform his official duties honestly, diligently, and in good faith. In participating in Mallon's Fraudulent Scheme and in carrying out Watson's Misconduct, Watson breached his duties to the Town, including the fiduciary duty of care he owed to the Town.

37. The Town was particularly vulnerable to the discretion and authority Watson had over the Town's assets and finances in light of his position such that the misuse described in Mallon's Fraudulent Scheme and Watson's Misconduct constitutes a breach of fiduciary duty causing injury, loss, and damage to the Town.
38. As a result of Watson's breaches of duty, the Town has suffered injury, loss, and damage in the amount of approximately \$1,259,479.15 or such further amounts as may be proven at the trial of this Action.

Breach of Contract by Mallon

39. The Town says that it was an express or implied term of her employment agreement that Mallon would perform her duties honestly, diligently, and in good faith.
40. In addition, it was a term of the employment agreement that Mallon would follow the bylaws, policies, and procedures of the Town, as well as the relevant legislation in relation to her oversight of the financial management of the Town.
41. Mallon breached the terms of the employment agreement, the SAO By-Law, the Employment By-Law, and her duties to the Town by misappropriating and converting funds of the Town for her own use and benefit.
42. Furthermore, Mallon breached the terms of the employment agreement by:
 - (a) seeking reimbursement for expenses that were not reasonable and not incurred in connection with the discharge of Mallon's duties as SAO;
 - (b) not providing proper receipts, invoices, or vouchers to the Town for expenses to be reimbursed; and
 - (c) being reimbursed for expenses that were not approved by the Town Council.
43. As a result of Mallon's breach of the terms of her employment agreement, the Town has suffered injury, loss, and damage in the amount of approximately \$1,259,479.15 and such further amounts as may be proven at the trial of this Action.

Conversion by Mallon

44. Mallon's misappropriation of the Town's funds through Mallon's Fraudulent Scheme constitutes an interference with the Town's right to immediate possession and use of such funds, and she has thereby inappropriately converted the Town's assets for her own use.
45. As a result of the conversion, the Town has suffered injury, loss, and damage in the amount of approximately \$1,259,479.15 or such further amounts to be proven at the trial of this Action.

Unjust Enrichment by Mallon

46. Mallon unjustly enriched herself to the detriment of the Town through Mallon's Fraudulent Scheme. Specifically, Mallon received \$1,259,479.15 in funds from the Town through Mallon's Fraudulent Scheme, while the Town was deprived of said funds, which contributed to the Town being put under administration by MACA. Furthermore, there was no juristic reason for Mallon's enrichment.
47. As a result of Mallon's unjust enrichment, the Town suffered injury, loss, and damage in the amount of approximately \$1,259,479.15 or such further amounts to be proven at the trial of this Action.

Unjust Enrichment by Watson

48. Watson unjustly enriched himself and Watson's Company to the detriment of the Town through his participation in Mallon's Fraudulent Scheme and through Watson's Misconduct. Furthermore, there was no juristic reason for the enrichment of Watson and Watson's Company.
49. As a result of the unjust enrichment of Watson and Watson's Company, the Town suffered injury, loss, and damage in the amount of approximately \$1,259,479.15 or such further amounts to be proven at the trial of this Action.

Punitive Damages

50. The Defendants' actions merit an award of punitive and exemplary damages in the amount of \$250,000.00 or such further and other amounts as deemed just and appropriate in the circumstances.

Tracing

51. The Town is entitled to a tracing of all amounts received and disbursed by the Defendants as part of or as a result of Mallon's Fraudulent Scheme and Watson's Misconduct in order to recover the amounts. The Town is also entitled to an accounting of the monies belonging to it that have come into the possession of the Defendants and an accounting of all property or benefits received as a result of Mallon's Fraudulent Scheme and Watson's Misconduct.

Injunction

52. To the best of the Town's knowledge, the misappropriated funds may be located in various bank accounts, property, or investments of the Defendants or any other asset the Defendants have an interest in ("Assets").
53. The Town is entitled to an interlocutory and a permanent injunction restraining the Defendants from disposing of any of their Assets, wherever located.
54. The Town is entitled to an accounting of all Assets of the Defendants, including any trust account or jointly held assets, any improper disposition thereof, all monies received by the Defendants or anyone on their behalf, and transactions between the Defendants and third parties.

Location of Trial

55. The Plaintiff proposes that the trial of this action be held at the City of Yellowknife, in the Northwest Territories.

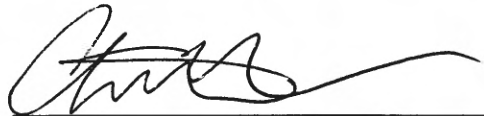
WHEREFORE the Plaintiff claims:

- a) Damages of \$1,259,479.15 or such further amounts that will be provided at the trial of this Action;
- b) Punitive damages in the amount of \$250,000.00 or such other amount this Honourable Court deems just;
- c) Interest pursuant to the *Judicature Act*, R.S.N.W.T. 1988, c. J-1;
- d) Costs of this Action; and
- e) Such further and other relief as this Honourable Court determines.

DATED at the City of Yellowknife in the Northwest Territories, this 3rd day of May, 2019,
AND DELIVERED BY McLennan Ross LLP, Barristers and Solicitors, Solicitors for the Plaintiff, whose address for service in the Northwest Territories is in care of said solicitors at 301, 5109-48th Street, Yellowknife, NT, X1A 1N5.

MCLENNAN ROSS LLP

Per:



Christopher D. Buchanan
Solicitor for the Plaintiff

Pursuant to Rule 47 of the *Rules of the Supreme Court of the Northwest Territories*, this Statement of Claim may be served on a defendant outside of the Northwest Territories on the basis that:

- the proceeding is to recover damages or obtain any other relief in respect of a breach of contract, where the contract was made in the jurisdiction;
- the action is founded on a tort committed in the jurisdiction; and
- in the action, an injunction is sought ordering a defendant to do or refrain from doing anything in the jurisdiction or a nuisance in the jurisdiction is sought to be prevented or removed, whether or not damages are also sought in respect of the action.

S-1-CV-2019- 000167

**IN THE SUPREME COURT OF THE
NORTHWEST TERRITORIES**

BETWEEN:

TOWN OF NORMAN WELLS

Plaintiff

- and -

**CATHERINE MALLON, NATHAN
WATSON, and 507314 N.W.T. LTD.**

Defendants

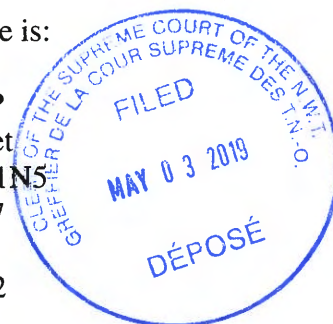
STATEMENT OF CLAIM

This Statement of Claim is delivered by:

Christopher D. Buchanan
Solicitor for the Plaintiff

whose address for service is:

McLennan Ross LLP
301, 5109 – 48th Street
Yellowknife, NT X1A 1N5
Phone: 867.766.7677
Fax: 867.766.7678
File Number: 192112



The last known place of residence of the
Defendant, Catherine Mallon, is:
100 Future Road, Mayo, Yukon

The last known place of residence of the
Defendants, Nathan Watson and 507314
N.W.T. Ltd., is:
10 Carajou Street, Norman Wells, NT